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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Deployment of Wireline Services Offering
Advanced Telecommunications Capability

CC Docket No. 98-147

REPLY COMMENTS OF VERIO INC.

Verio Inc.¹ ("Verio"), through its counsel, hereby replies to the comments filed in response to the Notice of Proposed Rulemaking ("NPRM") in this docket.²

The comments generally agree with the Commission that deployment of reliable, high-speed "last mile" services is critical if end users are to obtain maximum value from the Internet.³ The Order, by directing the ILECs to make facilities suitable for DSL available as unbundled network elements and to make advanced telecommunications services available to their competitors for resale, takes an important first step toward providing the framework for such competition. Under the Order, ISPs can turn both to incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") for the competitive

¹ Verio, which was incorporated in March, 1996 to meet the growing needs of business customers for Internet access and related services, offers turnkey business Internet solutions encompassing a wide range of Internet connectivity and enhanced Internet services throughout the United States.

² *Deployment of Wireline Services Offering Advanced Telecommunication Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking FCC No. 98-188 (rel. Aug. 7, 1998) ("Order") ("NPRM").

³ See, e.g., Comments of Mindspring Enterprises, Inc. ("Mindspring") at 2; Comments of Commercial Internet eXchange Association ("CIX") at 2-3; Qwest Communications Corporation Comments at 2; Comments of the Internet Service Providers' Consortium at 16-17.

No. of Pages rec'd. 044
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provision of high-quality last mile services. Both ILEC and CLEC providers of advanced services, therefore, will have strong incentives to make such services as efficient and useful to consumers as possible.

However, the Commission's proposal to permit ILECs to offer advanced services through unregulated affiliates may fatally undermine the positive effects of the Order. If the Commission permits the ILECs to provide advanced services through unregulated affiliates, ILECs will make the rational decision to divert most of their investment in advanced services to the unregulated entity, where the facilities used to provide those services will not be available to competitors as unbundled network elements and the services themselves will not be available to CLEC resellers.⁴ At the same time, the unregulated affiliates will have no obligation to sell their advanced telecommunications services, on nondiscriminatory terms and conditions, to unaffiliated ISPs, but will have every incentive to favor ISPs owned by the parent ILEC or integrated with the unregulated affiliates' telecommunications service operations. As a result, the CLECs and independent ISPs will be able to obtain advanced ILEC services only from the regulated ILEC operations, which will suffer from underinvestment and correspondingly low quality and availability. The number of available, competing vendors of high-quality advanced services to the independent ISP industry will be artificially reduced, to the detriment of consumers.

A number of commenters agree that the Commission's proposal poses grave competitive risks, and Verio generally agrees with the analysis made in those comments.⁵ Verio does not believe, however, that the difficulties with the Commission's proposal can be addressed by imposing "equal access" obligations or other restrictions on the data

⁴ See Comments of Mindspring Enterprises, Inc. at 16.

⁵ See, e.g., Comments of Commercial Internet eXchange Association at 15-23 ("CIX Comments"); Comments of Association for Local Telecommunications Services at 18-24 ("ALTS Comments"); Comments of Competitive Telecommunications Association at 14 *et seq.* ("CompTel Comments").

affiliates or by imposing more stringent structural separation requirements on the ILECs and their unregulated affiliates.⁶ The Bell operating companies' record of non-compliance with the market-opening requirements of the Telecommunications Act of 1996 demonstrates the willingness of ILECs to continue to evade rules intended to prevent anticompetitive conduct.⁷ And in any case, the imposition of new regulations, with accompanying enforcement mechanisms and proceedings, defeats the Commission's purpose in proposing to authorize "unregulated" ILEC data affiliates and is likely to be unattractive, even to the ILECs for which the proposal is intended.⁸

The proper course for Commission, therefore, is not to make an elaborate -- and probably unlawful⁹ -- end-run around the requirements of section 251(c) of the Communications Act, and then address the competitive risks posed by that decision through new and doubtfully effective regulations. Instead, the Commission should leave in place the statutory requirement that all ILEC telecommunications service -- including DSL and other

⁶ The Commercial Internet eXchange Association ("CIX"), for example, proposes additional regulations imposing non-discrimination and equal requirements. See CIX Comments at 15-23. The Association for Local Telecommunications Services ("ALTS") suggests certain minimum requirements for unregulated ILEC data affiliates, including appreciable outside ownership in the affiliate and strict requirements and compliance showings regarding the sale of unbundled network elements ("UNEs") by the parent ILEC to its data affiliate. ALTS Comments at 18-24. Similarly, the Competitive Telecommunications Association ("CompTel") seeks a full compliance plan demonstrating steps to satisfy the separations requirements, substantial independent ownership of the unregulated affiliate and restrictions on the affiliate's access to the ILEC's network. CompTel Comments at 14 *et seq.*

⁷ See, e.g., CIX Comments at 12 (pointing out that "[t]he BOCs' record of [] noncompliance with section 272 -- despite their assurances that they have met the requirements of that section -- indicates that the Commission cannot rely on ILEC assurances that they will follow the rules."

⁸ ILEC industry commenters already have complained that the Commission's proposed structural separation requirements -- much less any additional regulations -- will be "unnecessary, costly and burdensome . . ." Comments of the United States Telephone Association at 4-5; see also Comments of BellSouth Corporation at 14-15.

⁹ See e.g., ALTS Comments at 4-12.

advanced services -- be provided in accordance with the section 251(c) requirements. At the same time, in order to reinforce the pro-competitive effect of its Order in this proceeding, the Commission should adopt the recommendation of CIX that ILECs be required to “[provide] efficient and nondiscriminatory telecommunications inputs to ISPs, . . . offer access to facilities, including collocation, on terms that are equal for all ISPs, . . . [provide customers] with a viable opportunity to choose among ISPs, and . . . not cross-subsidize ISP service with other revenues derived from ISP services.”¹⁰ The Commission also should adopt CIX’s recommendation that ILECs be required to make “unbundled local loops” available to ISPs.¹¹ As Verio pointed out in its comments in the Commission’s companion *Notice of Inquiry* proceeding on deployment of advanced services, if ILECs provide ISPs with clean loops suitable for DSL service at cost-based

¹⁰ CIX Comments at 10-11.

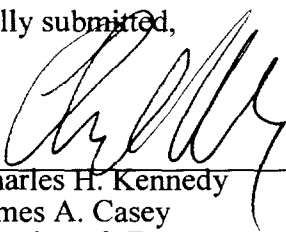
¹¹ *Id.* at 11; *see also* Mindspring Enterprises, Inc. Comments at 30.

rates, the number of alternative suppliers of advanced services for Internet end users will increase and consumers will enjoy a wider range of competitively-priced choices for high-speed Internet access.¹²

Dated: October 16, 1998

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¹² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, cc Docket No. 98-146, FCC No. 98-187, Notice of Inquiry (rel. Aug. 7, 1998), Comments of Verio Inc. at 3-5.

Certificate of Service

I, Kimberly E. Thomas, do hereby certify that the foregoing **REPLY COMMENTS OF Verio Inc.** were delivered, via hand delivery, on this 16th day of October, 1998, to the following:

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